

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**CSX TRANSPORTATION, INC.,
individually and on behalf of
NORFOLK AND PORTSMOUTH BELT LINE
RAILROAD COMPANY,**

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-LRL

NORFOLK SOUTHERN RAILWAY COMPANY, *et al.*,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION TO SEAL

Defendant Norfolk and Portsmouth Belt Line Railroad Company, by counsel, states as follows in support of its motion to seal Exhibit A to the memorandum in support of its motion for partial summary judgment on damages, as well as references to the exhibit in the body of the memorandum in support (collectively, the “Confidential Material”). Exhibit A is a copy of plaintiff CSX Transportation Inc.’s Rule 26(a)(1) disclosures, which were designated by CSXT as “confidential.”

There are three requirements for sealing court filings: (1) public notice with opportunity to object; (2) consideration of less drastic alternatives; and (3) a statement of specific findings in support of a decision to seal and reject alternatives to sealing. *Flexible Benefits Council v. Feldman*, No. 1:08-CV-371, 2008 U.S. Dist. LEXIS 93039 (E.D. Va. Nov. 13, 2008) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Even when no party challenges a motion to seal, the Court must still ensure the motion is supported by good cause. *Auburn Univ. v. IBM Corp.*, No. 3:0-cv-694-MEF, unpublished, 2010 WL 3927737 (M.D. Ala. Oct. 4, 2010).

The Stipulated Protective Order entered on October 29, 2019 requires the Belt Line to file a motion to have the Confidential Material filed under seal. CSXT designated the Confidential Material as “confidential.” By designating the Confidential Material as “confidential,” CSXT “believes in good faith” that the Confidential Material “must or may be protected from disclosure.” *Id.* at ¶ 2. The Confidential Material is an exhibit to the Belt Line’s motion for partial summary judgment on damages. Therefore, pursuant to paragraph 16 of the Stipulated Protective Order, the Belt Line must seek to have the Confidential Material filed under seal: “Should any Receiving Party [the Belt Line] file any Confidential Material ... with the Court, that Party must file a separate and specific motion filing that material under seal....” D.E. 79 at ¶ 16.

Accordingly, the Belt Line requests that this Court grant it leave to file a copy of the Confidential Material under seal, with such version to remain sealed until further court order.

Dated: January 2, 2020

**NORFOLK AND PORTSMOUTH
BELT LINE RAILROAD COMPANY**

By: /s/ James L. Chapman, IV

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CERTIFICATE OF SERVICE

I certify that on this 2nd day of January 2020, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a “Notice of Electronic Filing” to all counsel of record who have consented to electronic service.

By: /s/ James L. Chapman, IV
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